

Order

Michigan Supreme Court
Lansing, Michigan

July 1, 2015

Robert P. Young, Jr.,
Chief Justice

151499 & (15)

Stephen J. Markman
Mary Beth Kelly
Brian K. Zahra
Bridget M. McCormack
David F. Viviano
Richard H. Bernstein,
Justices

PEOPLE OF THE STATE OF MICHIGAN,
Plaintiff-Appellee,

v

SC: 151499
COA: 325650
Berrien CC: 2013-003008-FH

MICHAEL DWAYNE BUTLER,
Defendant-Appellant.

On order of the Court, the motion for immediate consideration is GRANTED. The application for leave to appeal the March 5, 2015 order of the Court of Appeals is considered and, pursuant to MCR 7.302(H)(1), in lieu of granting leave to appeal, we VACATE the sentence of the Berrien Circuit Court and we REMAND this case to the trial court for resentencing. According to the Presentence Investigation Report and the sentencing transcript, the defendant was assessed 25 points on Offense Variable (OV) 13, MCL 777.43, based on out-of-state charges or accusations, but the record provides no facts in support of the score. Before any such alleged crimes may be used to score OV 13, the prosecution must prove by a preponderance of the evidence that the crimes actually took place, that the defendant committed them, that they are properly classified as felony "crimes against a person," MCL 777.43(1)(c), and that they occurred "within a 5-year period" of the sentencing offense, MCL 777.43(2)(a). See *People v Hardy*, 494 Mich 430 (2013).



a0624

I, Larry S. Royster, Clerk of the Michigan Supreme Court, certify that the foregoing is a true and complete copy of the order entered at the direction of the Court.

July 1, 2015


Clerk